

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
**FILED**

2008 MAY 14 PM 12:13

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JOSE RAMIREZ-SALGADO,

Petitioner,

v.

LARRY E. SCRIBNER, Warden (A), et al.,

Respondents.

Civil No. 08-0562 WQH (WMc)

**ORDER REQUIRING RESPONSE TO  
PETITION (28 U.S.C. § 2254)**

On March 25, 2008, Petitioner, a state prisoner proceeding pro se, paid the \$5.00 filing fee and submitted a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. The Court dismissed the petition on April 3, 2008, because Petitioner had failed to name the proper respondent and had failed to allege exhaustion as to all claims in the petition. (*See* Doc. No. 2.) Petitioner was given until May 5, 2008, to choose one of the option outlined in the Order and file a First Amended Petition which named a proper Respondent. (*Id.*) On May 2, 2008, Petitioner filed a response to the Court's dismissal order and a First Amended Petition. (*See* Doc. Nos. 3, 4.)

25     ///

26     ///

27     ///

28     ///

1       Upon review of the petition and in accordance with Rule 4 of the rules governing  
 2 petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, and upon a preliminary  
 3 review of the Petition, **IT IS ORDERED** that:

4       1. The Clerk of this Court shall promptly (a) serve a copy of the Petition and a copy of  
 5 this Order on the Attorney General for the State of California, or his authorized agent; and  
 6 (b) serve a copy of this Order on Petitioner.

7       2. If Respondent contends the Petition can be decided without the Court's reaching the  
 8 merits of Petitioner's claims (e.g., because Respondent contends Petitioner has failed to exhaust  
 9 any state remedies as to any ground for relief alleged in the Petition, or that the Petition is barred  
 10 by the statute of limitations, or that the Petition is subject to dismissal under Rule 9 of the Rules  
 11 Governing § 2254 Cases, or that all of the claims are procedurally defaulted, or that Petitioner  
 12 is not in custody), Respondent shall file a motion to dismiss pursuant to Rule 4 of the Rules  
 13 Governing § 2254 Cases no later than June 30, 2008. The motion to dismiss shall not address  
 14 the merits of Petitioner's claims, but rather shall address all grounds upon which Respondent  
 15 contends dismissal without reaching the merits of Petitioner's claims is warranted.<sup>1</sup> At the time  
 16 the motion to dismiss is filed, Respondent shall lodge with the Court all records bearing on  
 17 Respondent's contention in this regard. A hearing date is not required for the motion to dismiss.

18       3. If Respondent files a motion to dismiss, Petitioner shall file his opposition, if any, to  
 19 the motion no later than July 30. 2008. At the time the opposition is filed, Petitioner shall lodge  
 20 with the Court any records not lodged by Respondent which Petitioner believes may be relevant  
 21 to the Court's determination of the motion.

22       4. Unless the Court orders otherwise, Respondent shall not file a reply to Petitioner's  
 23 opposition to a motion to dismiss. If the motion is denied, the Court will afford Respondent  
 24 adequate time to respond to Petitioner's claims on the merits.

25       5. If Respondent does not contend that the Petition can be decided without the Court  
 26 reaching the merits of Petitioner's claims, Respondent shall file and serve an answer to the

---

27  
 28       <sup>1</sup> If Respondent contends Petitioner has failed to exhaust any state remedies as to any ground for relief alleged in  
 the Petition, the motion to dismiss shall also specify the state remedies still available to Petitioner.

1 Petition, and a memorandum of points and authorities in support of such answer, pursuant to  
 2 Rule 5 of the Rules Governing § 2254 Cases no later than July 14, 2008. At the time the answer  
 3 is filed, Respondent shall lodge with the Court all records bearing on the merits of Petitioner's  
 4 claims. The lodgments shall be accompanied by a notice of lodgment which shall be captioned  
 5 "Notice of Lodgment in 28 U.S.C. § 2254 Habeas Corpus Case — To Be Sent to Clerk's  
 6 Office." Respondent shall not combine separate pleadings, orders or other items into a  
 7 combined lodgment entry. Each item shall be numbered separately and sequentially.

8       6. Petitioner may file a traverse to matters raised in the answer no later than August 14,  
 9 2008. Any traverse by Petitioner (a) shall state whether Petitioner admits or denies each  
 10 allegation of fact contained in the answer; (b) shall be limited to facts or arguments responsive  
 11 to matters raised in the answer; and (c) shall not raise new grounds for relief that were not  
 12 asserted in the Petition. Grounds for relief withheld until the traverse will not be considered.  
 13 No traverse shall exceed ten (10) pages in length absent advance leave of Court for good cause  
 14 shown.

15       7. A request by a party for an extension of time within which to file any of the pleadings  
 16 required by this Order should be made in advance of the due date of the pleading, and the Court  
 17 will grant such a request only upon a showing of good cause. Any such request shall be  
 18 accompanied by a declaration under penalty of perjury explaining why an extension of time is  
 19 necessary.

20       8. Unless otherwise ordered by the Court, this case shall be deemed submitted on the day  
 21 following the date Petitioner's opposition to a motion to dismiss and/or his traverse is due.

22       9. Every document delivered to the Court must include a certificate of service attesting  
 23 that a copy of such document was served on opposing counsel (or on the opposing party, if such  
 24 party is not represented by counsel). Any document delivered to the Court without a certificate  
 25 of service will be returned to the submitting party and will be disregarded by the Court.

26       ///

27       ///

28       ///

1       10. Petitioner shall immediately notify the Court and counsel for Respondent of any  
2 change of Petitioner's address. If Petitioner fails to keep the Court informed of where Petitioner  
3 may be contacted, this action will be subject to dismissal for failure to prosecute.

## **IT IS SO ORDERED.**

5 DATED: 5/13/08

W. McLearn

Willaim McCurine, Jr.  
United States Magistrate Judge